CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 228.

THE UNITED STATES, PETITIONER,

vs.

EMIL DIECKERHOFF, ADOLPH ERBSLOB, RUDOLPH ERBSLOB, AND LUDWIG DEUSS, COMPOSING THE FIRM OF DIECKERHOFF, RAFFLOER & CO., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 13, 1905.
CERTIORARI AND RETURN FILED MAY 1, 1905.

(19710)

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a United States Circuit Court of Appeals for the Second Circuit.

EMIL DIECKERHOFF ET AL., plaintiffs in error (defendants below),
vs.
THE UNITED STATES, DEFENDANT in error (plaintiff below).

Transcript of Record—Error to the Circuit Court of the United States for the Southern District of New York.

53978. F. 5575—1900.
Printed under the direction of the clerk.

1 UNITED STATES OF AMERICA, ss.

The President of the United States of America, to the judges of the Circuit Court of the United States for the Southern District of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between United States of America, plaintiff, vs. Emil Dieckerhoff, Adolph Erbslob, Rudolph Erbslob, and Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Co., and of F. Boker and John Achelis, defendants, a manifest error hath happened, to the great damage of the said Emil Dieckerhoff et al., as is said and appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the judges of the United States Circuit Court of Appeals for the Second Circuit, at the City of New York, together with this writ, so that you have the same at the said place, before the judges aforesaid, on the 10th day of November, 1903, that the record and proceedings aforesaid being inspected, the said judges of the United States Circuit Court of Appeals for the Second Circuit, may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

2 Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12th day of October, in the year of our Lord one thousand nine hundred and three, and of the Independence of the United States the one *one* hundred and twenty-eighth.

[L. S.] JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

E. HENRY LACOMBE,
U. S. Circuit Judge.

UNITED STATES OF AMERICA.
Southern District of New York, ss:

I, John A. Shields, clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify, that the following pages, numbered from three to thirty-three, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Emil Dieckerhoff, Adolph Erbslob, Rudolph Erbslob, and Ludwig Erbslob, composing the firm of Dieckerhoff, Raffloer & Company, and Carl F. Boker and John Achelis, plaintiffs in error, against The United States of America, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this eighth day of January, in
3 the year of our Lord one thousand nine hundred and four, and of the Independence of the United States the one hundred and twenty-eighth.

[L. S.] JOHN A. SHIELDS, *Clerk.*

(Endorsed:) The U. S. Circuit Court of Appeals for the Second Circuit. Emil Dieckerhoff et al., plaintiffs in error, vs. United States of America, defendant in error. Writ of error. Curie, Smith & Maxwell, attorneys for plaintiffs in error, 22 William street, N. Y. City. A copy of the within paper has been this day received at this office, Oct. 16, 1903. Henry L. Burnett, U. S. atttorney. U. S. Circuit Court, Southern District, New York. Filed Oct. 16, 1903. John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

UNITED STATES OF AMERICA
vgst.
EMIL DIECKERHOFF, ADOLPH ERBSLOB, RUDOLPH Erbslob, and Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Company, and Carl F. Boker and John Achelis.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within
4 twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, at the borough of Manhattan, in the city of New York, this 5th day of February, in the year one thousand eight hundred and ninety-seven.

[L. S.] JOHN A. SHIELDS, *Clerk.*

WALLACE MACFARLANE,
United States Attorney, Plaintiff's Attorney.

Office and post-office address, U. S. P. O. Building, borough of Manhattan, New York City.

Circuit Court of the United States, Southern District of New York.

UNITED STATES OF AMERICA
vs.
EMIL DIECKERHOFF, ADOLPH ERBSLOH, RUDOLPH Erbsloh, and Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Company, and Carl F. Boker and John Achelis.

The plaintiffs by Wallace Macfarlane, attorney of the United
5 States in and for the Southern District of New York, complain of the defendants, and allege upon information and belief:

I. That at the time hereinafter mentioned the defendants Emil Dieckerhoff, Adolph Erbsloh, Rudolph Erbsloh, and Ludwig Deuss, were copartners in business in the city of New York under the firm name of Dieckerhoff, Raffloer & Company.

II. That on or about the 21st day of December, 1896, the defendants Emil Dieckerhoff, Adolph Erbsloh, Rudolph Erbsloh, and Ludwig Deuss, in their said firm name as principals, and the defendants Carl F. Boker and John Achelis, as sureties, signed, sealed, executed, and delivered unto the plaintiffs their certain bond or writing obligatory, of which the following is a copy:

"*Bond for six months to cover the delivery of unexamined packages.*

"Know all men by these presents, That we, Dieckerhoff, Raffloer & Co., as principals, and John Achelis and Carl F. Boker, as sureties, are held and firmly bound unto the United States of America in the sum of fifty thousand dollars, for the payment whereof to the United States we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents; as witness our hands and seals this twenty-first day of December, eighteen hundred and ninety-six.

"The condition of this obligation is such, that if each and every package or packages of each and every importation made by the said principals at any time within six months from and after the date of these presents, and delivered from the custody of the officers of the customs,
in pursuance of section 2899, Revised Statutes of the United
6 States, shall, within ten days after the package or packages designated by the collector and sent to the public store to be opened and examined have been appraised and reported to him, be returned to the order of the collector without having been opened except with the consent of the collector or surveyor, given in writing, and then in the presents of one of the officers of the customs; or if the above-bounded obligors shall, in lieu of such return, pay to the proper collecting officer of said port double the estimated value of the package or packages of merchandise not so returned, then this obligation is to be void; otherwise, to remain in full force and virtue.

"And the above-bounded obligors do, for themselves, their heirs, executors, administrators, and assigns, jointly and severally covenant and agree with the United States that the collector of customs aforesaid shall endorse on this bond the estimated value of each importation as made, and the date thereof, and that the penalty of this bond shall be held to

be double the value of each importation as made and indorsed as aforesaid; and that the value of the importation, where there is no violation of the conditions of this bond, shall not in any way affect the liability in those cases where there shall be a violation thereof.

"Sealed with our seals this twenty-first day of December, one thousand eight hundred and ninety-six.

(Sgd.) "DIECKERHOFF, RAFFLOER & CO., [L. S.]

"By R. ERBSLOB, [L. S.]

(Sgd.) "CARL F. BOKER, [L. S.]

(Sgd.) "JOHN ACHELIS. [L. S.]

"Sealed and delivered in the presence of:

(Sgd.) "W. A. COURSEN."

7 III. That on or about the 13th day of January, 1897, while the said bond was in full force and effect, the defendants, composing the firm of Dieckerhoff, Raffloer & Company, imported into the port of New York and there made an entry in writing in the custom-house of seven cases, or packages, of merchandise, numbered 417 to 421, inclusive, and 983 and 984, imported per steamship "Bovic," January 13, 1897, entry number 7042, and at the time of such entry the collector designated one of the said cases or packages, numbered 418, to be sent to the public store for examination and appraisement; that the remaining cases or packages were, on or about said last-mentioned date and within six months from the date of said bond, delivered to the said firm of Dieckerhoff, Raffloer & Company from the custody of the officers of the customs of the port of New York in pursuance of section 2899 of the Revised Statutes of the United States and in reliance upon and by reason of the said bond.

IV. That at about the time of said entry the collector of the customs did endorse on said bond the estimated value of the whole of said importation, to wit, the sum of $1,522.00 in the manner and form in said bond provided.

V. That thereafter and on or about January 18, 1897, the packages of said importation designated by the collector and sent to the public stores to be opened and examined was appraised and reported to the said collector; and within ten days after said last-mentioned package had been so appraised and reported and on or about January 18, 1897, the collector ordered the defendants, Emil Dieckerhoff, Adolph Erbsloh, Rudolph Erbsloh, and Ludwig Deuss, composing the firm of Dieckerhoff,

8 Raffloer & Company to return to him package No. 420, one of the packages included in the importation aforesaid and delivered as aforesaid to the defendants composing the firm of Dieckerhoff, Raffloer & Company, as aforesaid, in reliance upon and by reason of said bond.

VI. That the defendant did not within ten days after the said package designated by the collector and sent to the public stores to be opened and examined had been appraised and reported to the collector return to the order of said collector the package of said importation No. 420, demanded by the collector aforesaid, without having been opened except with the consent of the collector or surveyor, given in writing, and then in the presence of one of the officers of the customs, and did not return the said

package No. 420 at all, but wholly neglected, failed, and refused to return the said package.

VII. And plaintiffs further allege that the defendants have wholly failed, neglected, and refused in lieu of returning said package No. 420 demanded as aforesaid to pay to the proper collecting officer of the port of New York where said importation was made and entered double the estimated value of the said package No. 420, which the said defendants failed and refused to return as aforesaid.

All contrary to the obligations of said bond and to the laws of the United States in such case made and provided.

Whereby an action has accrued to the United States for double the estimated value of said package of merchandise No. 420, to wit, the sum of $135.54, with interest from January 18, 1897.

Wherefore the plaintiffs pray judgment against the said defendants for the sum of $135.54, with interest from January 18, 1897.

WALLACE MACFARLANE,
Attorney of the United States in and for the Southern District of New York.

9 SOUTHERN DISTRICT OF NEW YORK, *ss:*

James F. Higgins, being duly sworn, deposes and says that he is in charge of the bond and balance of duty bureau of the U. S. attorney's office for said district.

That the foregoing complaint is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

That the action is brought upon a written instrument (a copy of which is included in and forms a part of said complaint) now in the possession of the collector of the port, as deponent believes.

That the sources of deponent's information and the grounds of his belief are correspondence with, and a copy of said bond furnished by said collector.

JAS. F. HIGGINS.

Sworn to before me this 5th day of February, 1897.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

(Endorsed:) U. S. Circuit Court, Southern District of New York. United States vs. Emil Dieckerhoff et al. Summons and complaint. Wallace Macfarlane, United States attorney, attorney for plaintiff.

I hereby certify, that on the 8th day of February, 1897, at the city of New York, in my district, I personally served the within summons upon the within defendants, Ludwig Deuss and Carl F. Boker, by exhibiting to each of them the within original, and at the same time leaving with each of them a copy thereof. At the same time and place I deliv-

10 ered to and left with each of them a copy of the annexed complaint. John H. McCarthy, United States marshal, Southern District of New York. Dated Feb. 16, 1897. U. S. Circuit Court. Filed Jan. 27, 1898. John A. Shields, clerk.